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UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

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United States of America,  
Plaintiff,  
and  
State of Minnesota, by its  
Attorney General Warren Spannaus,  
its Department of Health, and  
its Pollution Control Agency,  
Plaintiff-Intervenor,  
vs.

Reilly Tar & Chemical Corporation;  
Housing and Redevelopment authority  
of Saint Louis Park; Oak Park  
Village Associates; Rustic Oaks  
Condominium Incorporated; and  
Philip's Investment Company,  
Defendants.

Civil No.  
4-80-469

and  
City of Saint Louis Park,  
Plaintiff-Intervenor,  
vs.  
Reilly Tar and Chemical Corporation,  
Defendant.

and  
City of Hopkins,  
Plaintiff-Intervenor,  
vs.  
Reilly Tar & Chemical Corporation,  
Defendant.  
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The Deposition of ROLFE A. WORDEN, taken  
pursuant to Notice of Taking Deposition, taken before  
Kirby A. Kennedy, a Notary Public in and for the County  
of Hennepin, State of Minnesota, taken on the 21st day  
of April 1983, at 2000 First Bank Place East  
Minneapolis, Minnesota, commencing at approximately  
10:15 o'clock a.m.

US EPA RECORDS CENTER REGION 5



512912

APPEARANCES

DENNIS M. COYNE, ESQUIRE, and STEPHEN SHAKMAN, ESQUIRE, Special Assistant Attorneys General, 1935 West County Road B2, Roseville, Minnesota 55113, appeared for and on behalf of Plaintiff-Intervenor, State of Minnesota.

WAYNE G. POPHAM, ESQUIRE, of the law firm of POPHAM, HAIK, SCHNOBRICH, KAUFMAN and DOTY, LIMITED, 4344 IDS Center, Minneapolis, Minnesota 55402, appeared for and on behalf of Plaintiff-Intervenor, City of Saint Louis Park.

EDWARD J. SCHWARTZBAUER, ESQUIRE, of the law firm of DORSEY and WHITNEY, 2200 First Bank Place East, Minneapolis, Minnesota 55402, appeared for and on behalf of Defendant, Reilly Tar and Chemical Corporation.

THOMAS E. REIERSGORD, ESQUIRE, of the firm of YNGVE & REIERSGORD, Attorneys at Law, 6250 Wayzata Boulevard, Minneapolis, Minnesota 55416, appeared for and on behalf of Defendant, Reilly Tar and Chemical Corporation.

JOSEPH C. VESELY, ESQUIRE, of the firm of VESELY, OTTO, MILLER & KEEFE, Attorneys at Law, Suite 203, Northwestern Bank Building, Hopkins, Minnesota 55343, appeared for and on behalf of Plaintiff-Intervenor, City of Hopkins.

1                   ROLFE A. WORDEN,

2                   the Witness in the above-entitled  
3                   matter after having been first duly  
4                   sworn deposes and says as follows:

5  
6                   CROSS-EXAMINATION

7                   BY MR. SCHWARTZBAUER:

8                   Q.     Rolfe, would you give your name and your home  
9                   address?

10                  A.     My name is Rolfe Worden. My home address is  
11                  2440 Regent Avenue North in Golden Valley.

12                  Q.     And you are a partner or a member of the firm  
13                  of Popham, Haik, Snobrich, Kaufman and Doty, Limited?

14                  A.     Yes, that's correct.

15                  Q.     Your business address?

16                  A.     4344 IDS Center.

17                  Q.     Were you present when I questioned Mr.  
18                  Macomber?

19                  A.     Yes, I was.

20                  Q.     I am going to just state for this deposition  
21                  what I said with respect to Mr. Macomber's, and that is  
22                  that I am going to be asking you some questions about  
23                  events which occurred in the 1970's but I am going to  
24                  avoid asking you any questions about communications  
25                  with your clients, which were intended to be

1 confidential, and I don't intend to ask you about  
2 anything that occurred subsequent to April 11, 1978  
3 when this lawsuit was reinstated by the filing of an  
4 amended complaint

5 (At this time a discussion was held off the  
6 record.)

7 MR. POPHAM: Does the same statement,  
8 Mr. Schwartzbauer, apply to work product?

9 MR. SCHWARTZBAUER: Well, I think we  
10 have a difference of opinion as to what work product is.

11 MR. POPHAM: Would you at least commit  
12 yourself to try to avoid questions relating to work  
13 product?

14 MR. SCHWARTZBAUER: I can't do that  
15 because I don't think we agree as to what work product  
16 means. I don't think we agree as to whether the  
17 understandings on the part of the negotiators to the  
18 settlement agreement, whether that constitutes work  
19 product or whether that constitutes admissible  
20 evidence.

21 MR. POPHAM: So based on that you intend  
22 to ask questions that in any way relate to work product?

23 MR. SCHWARTZBAUER: I do intend to ask  
24 questions which relate to Rolfe's understanding of  
25 certain things that are relevant to the making of the

1 contract of settlement.

2 BY MR. SCHWARTZBAUER:

3 Q. Rolfe, have you reviewed any documents to  
4 prepare for this deposition?

5 A. Yes, I have.

6 Q. Can you tell us what you reviewed?

7 A. I looked at a title opinion to the Reilly Tar  
8 property that I prepared, I reviewed some  
9 correspondence from Jack Van De North of the Pollution  
10 Control Agency to me, one letter, and I reviewed one  
11 letter from Eldon Kaul of the Pollution Control Agency  
12 to me.

13 Q. Is that it?

14 A. Yes.

15 Q. I am sure I have seen all those. Can you  
16 tell us, please, at what time you first became involved  
17 in the Reilly Tar matter?

18 A. To the best of my recollection it was in the  
19 early part of 1972.

20 Q. And in general what aspects of the Reilly Tar  
21 matter did you work on prior to April 11, 1978?

22 A. I worked on the preparation of the purchase  
23 agreement for purchase of real estate by the City  
24 whereby the City acquired the Reilly Tar site from  
25 Reilly Tar.

1 Q. Anything else?

2 A. No.

3 Q. Were you involved in hearings before the  
4 Pollution Control Agency relative to an NPDES permit?

5 A. No, I was not.

6 Q. Did you assist in any way in the preparation  
7 of the complaint in this lawsuit?

8 A. No, I did not.

9 Q. Did you ever review any Pollution Control  
10 Agency files relative to groundwater pollution?

11 A. No, I did not.

12 Q. Did you review Saint Louis Park files  
13 relative to groundwater pollution?

14 A. No, I did not.

15 Q. I may have asked the last two questions in  
16 terms of files. Well, read the last question to me,  
17 will you?

18 (Whereupon the requested portion of the  
19 record was read by the Court Reporter.)

20 BY MR. SCHWARTZBAUER:

21 Q. Let me expand the question. Prior to April  
22 of 1972, April 14, 1972, which is the date of the  
23 purchase agreement which you indicated that you  
24 prepared, had you seen any reports submitted to the  
25 city of Saint Louis Park relative to groundwater

1 pollution?

2 A. No, I had not.

3 Q. Had you seen any reports of the Minnesota  
4 Pollution Control Agency relating to that subject?

5 A. No, I did not.

6 Q. What is the general nature of your law  
7 practice? By that I mean do you specialize in any  
8 particular field?

9 A. I concentrate in the areas of real estate,  
10 secure transactions and generally bankruptcy, financial  
11 distress in debtor-creditor areas.

12 Q. How did you happen to become involved in the  
13 preparation of the agreement for the purchase of real  
14 estate relating to the Reilly Tar property?

15 A. I was requested to become involved by Mr.  
16 Popham of our office.

17 Q. I am going to show you a copy of Reilly Tar  
18 Exhibit Number 31. Is that a copy of the final  
19 agreement?

20 A. Yes, it is the final purchase agreement.

21 Q. Did you prepare that?

22 A. I believe I did.

23 Q. Did you participate in any of the  
24 negotiations that led up to the purchase of the  
25 property?

1 A. No, I did not.

2 Q. Did someone acting as a City Attorney  
3 participate in those negotiations to the best of your  
4 knowledge?

5 A. I am not aware that they did. I believe that  
6 was accomplished primarily by the City staff.

7 Q. Rolfe, prior to testifying, have you taken  
8 the time to review your desk book or anything like a  
9 desk book to refresh your memory as to dates of your  
10 involvement?

11 A. No, not recently.

12 Q. Have you had a chance to look at time sheets  
13 or anything of that nature?

14 A. Not at all recently.

15 Q. Well, what is your best recollection as to  
16 how long prior to April 14, 1972 you became involved in  
17 connection with the preparation of this agreement?

18 A. I don't specifically recall, but I have the  
19 impression it was not a very long time period prior to  
20 the date of the purchase agreement.

21 (At this time RTC Deposition Exhibit  
22 61 was marked for identification by the  
23 Court Reporter.)

24 BY MR. SCHWARTZBAUER:

25 Q. I am going to hand you Reilly Tar Deposition



1 Exhibit 61. On its face it bears the title, "Terms of  
2 Real Estate Offer." Let me take a minute to get copies  
3 to the other people. May I see your copy?

4 A. Sure.

5 Q. It's partly cut off on the Xerox copy that  
6 you have here, but this document has the handwritten  
7 date 2-12-71 meaning February 12, 1971. Have you seen  
8 that previously?

9 A. No, I don't believe I have.

10 Q. I am not trying to cross you up but my  
11 information is that you were at a meeting on February  
12 12, 1971 when Herb Finch and Tom Reiersgord came to the  
13 Saint Louis Park City Hall and you were there with Mr.  
14 Chris Cherch's and at that time Mr. Reiersgord gave the  
15 City that document, Reilly Tar Exhibit 61. Now, having  
16 said that, does that refresh your recollection at all?

17 A. No, it doesn't. I don't recall being at that  
18 meeting.

19 Q. Getting back to the agreement itself then,  
20 which is Exhibit 31, tell us whether there were any  
21 prior drafts of this document.

22 A. I believe there was a prior draft prepared by  
23 Mr. Reiersgord.

24 Q. What can you recall as to who prepared the  
25 first draft?

1           A.    My recollection is that Mr. Reiersgord did  
2   prepare the first draft.

3           Q.    And is this the second or the third or the  
4   fourth draft to the best of your recollection?

5           A.    To the best of my recollection this is the  
6   second and final draft. I could be wrong.

7           Q.    Did you have conversations with Mr.  
8   Reiersgord or anybody else representing Reilly with  
9   respect to the drafting of this document?

10          A.    I believe at the time I drafted it I had some  
11   conversations with Mr. Reiersgord as to matters of  
12   style and setting up the purchase agreement.

13          Q.    Let me direct your attention to Paragraph  
14   Number 4, right on the first page. Why don't you just  
15   read that to yourself?

16          A.    Yes, I have read it.

17          Q.    Did you discuss that paragraph with Mr.  
18   Reiersgord?

19          A.    I don't believe I did. I believe that was  
20   not a subject of discussion.

21          Q.    Did you discuss it with Mr. Finch or any  
22   other Reilly representative?

23          A.    No, I didn't.

24          Q.    What was your understanding of the words "as  
25   is"?

1 MR. POPHAM: That would be objected to.

2 BY MR. SCHWARTZBAUER:

3 Q. The agreement reads in part: "The buyer is  
4 acquired said premises in an as is condition except for  
5 the provisions in Number 5 of this agreement and that  
6 this as is includes any and all conditions of soil and  
7 water impurities and soil conditions." What was your  
8 understanding of that phrase?

9 MR. POPHAM: Some objection.

10 BY MR. SCHWARTZBAUER:

11 Q. When this agreement was reached did you send  
12 a copy of it to the State of Minnesota?

13 A. I don't recall whether I did or not.

14 Q. Did you advise the State of Minnesota that  
15 this agreement had been reached?

16 A. I believe I did.

17 Q. Who did you give that information to?

18 A. I believe it would have been Bob Lindall.

19 Q. When and how did that come about?

20 MR. COYNE: I object to the question  
21 pertaining to the conversations between counsel for  
22 co-plaintiffs and the pending State litigation.

23 MR. SCHWARTZBAUER: Wayne, do you have  
24 any problem with him answering that question?

25 MR. POPHAM: As I understood the

1 question asked for a date of conversation and place.

2 MR. SCHWARTZBAUER: Date and place and  
3 how did it happen to come about.

4 MR. POPHAM: I would have no objection  
5 to the witness identifying a date or place of the  
6 conversation.

7 A. I don't recall a specific date and I believe  
8 it would have been a telephone conversation or  
9 conversations.

10 Q. Was it about the date that this agreement was  
11 signed?

12 A. I believe it would have been, yes.

13 Q. Let's focus on Paragraph 9, that's on Page 5.  
14 Would you read that to yourself?

15 A. All right. Yes, I have read it.

16 Q. In part it reads: "It is understood that the  
17 City of Saint Louis Park will deliver dismissals with  
18 prejudice and without cost to defendant executed by  
19 itself and the Defendant State of Minnesota." At the  
20 time that this agreement was put together did you  
21 believe that the State would do that?

22 MR. POPHAM: Objection.

23 MR. SCHWARTZBAUER: Again, Wayne, when  
24 you object --

25 MR. POPHAM: I instruct him not to

1 answer.

2 MR. SCHWARTZBAUER: Okay. May I  
3 interpret all your objections as also containing that  
4 instruction?

5 MR. POPHAM: That is correct. If there  
6 is something where I am objecting for the record and  
7 intending the witness to answer then I will indicate  
8 that.

9 MR. SCHWARTZBAUER: Thanks.

10 BY MR. SCHWARTZBAUER:

11 Q. Well, it would seem to me that if the City of  
12 Saint Louis Park was promising to deliver a dismissal  
13 with prejudice executed by the State of Minnesota at  
14 closing there must have been some reason for believing  
15 that. Can you tell me what that reason was?

16 MR. POPHAM: I don't know what the  
17 witness' answer to the question is but I am going to  
18 indicate to the witness that in my opinion it is not  
19 proper for you to respond with knowledge that reflects  
20 attorney-client communications or work product. I  
21 don't know whether there is something beyond that that  
22 enables you to answer the question so that's all I can  
23 really say; and I would, I think, probably further  
24 indicate that if there is a question in your mind about  
25 whether a given item of information is or isn't

1 privileged or work product that you should confer with  
2 me before a position is taken on the record.

3 MR. COYNE: I object also on the form  
4 and breadth of the question.

5 A. In order to answer that question I would be  
6 basing my answer on client communications and work  
7 product and nothing that would not fall into that  
8 category.

9 Q. Did the State tell you that they would  
10 execute a dismissal with prejudice at closing?

11 MR. POPHAM: Objection.

12 MR. COYNE: I join in the objection.

13 BY MR. SCHWARTZBAUER:

14 Q. Had you asked the State of Minnesota whether  
15 they would do that?

16 MR. COYNE: I object.

17 MR. POPHAM: Object.

18 BY MR. SCHWARTZBAUER:

19 Q. Had you told Mr. Reiersgord that the State of  
20 Minnesota would deliver a dismissal at closing?

21 A. Yes.

22 Q. What was your basis for believing that.

23 MR. POPHAM: Objection.

24 MR. COYNE: Join in the objection.

25 BY MR. SCHWARTZBAUER:

1 Q. Let's focus on Paragraph 10 for a minute.  
2 Would you just read that to yourself?

3 A. Okay. I have read it.

4 Q. What was the purpose of identifying all wells  
5 and leaving them intact?

6 MR. POPHAM: Objection.

7 (At this time RTC Deposition Exhibit  
8 62 was marked for identification by the  
9 Court Reporter.)

10 BY MR. SCHWARTZBAUER:

11 Q. Rolfe, the Court Reporter has marked Reilly  
12 Tar Exhibit 62 and I am handing it to you. Can you  
13 identify that for the record?

14 A. Yes, this is a contract for deed dated  
15 October 12, 1972 between Reilly Tar & Chemical  
16 Corporation and the City of Saint Louis Park.

17 Q. What did you have to do with the preparation  
18 of that document.

19 MR. COYNE: Excuse me. Do you have a  
20 copy?

21 A. I believe I drafted that document.

22 Q. What were the circumstances that led up to  
23 the entering into this contract for deed?

24 A. The circumstances were essentially that the  
25 HUD financing, which the City had anticipated receiving,

1 in order to close in early October of 1972 as  
2 anticipated by the original purchase agreement or the  
3 previous exhibit, had not materialized at this point in  
4 time. Consequently, it was necessary for the City to  
5 in effect make a part payment and get an extension of  
6 time in which to pay the balance of the purchase price.

7 Q. You will notice that this document, Exhibit  
8 62, calls for a payment of \$5,000 cash which is  
9 acknowledged and the balance of \$1,895,000 payable as  
10 described, that is \$947,500 on or before December 15,  
11 1972 and the remainder on or before June 15, 1973. Now,  
12 can you remember whether or not that first payment,  
13 which was called for by December 15, 1972, was paid at  
14 that time?

15 A. I can't recall whether it was or not.

16 Q. Looking at the second page of the document,  
17 the second paragraph, do you want to take a minute?

18 A. That's okay.

19 Q. It reads, "The terms of the purchase  
20 agreement between the parties dated 14, 1972 shall  
21 survive the execution of this document unless herein  
22 modified." Do you know why that paragraph was  
23 included?

24 MR. POPHAM: Same objection.

25 BY MR. SCHWARTZBAUER:



1 Q. Then after this contract for deed was drafted  
2 did you continue to be involved in this sale of land?

3 A. Yes, I did.

4 Q. Was the matter finally closed on or about  
5 June 15, 1973?

6 A. Yes, it was.

7 Q. At that time did the City of Saint Louis Park  
8 deliver a dismissal with prejudice of the existing  
9 litigation?

10 A. No, it did not.

11 Q. Did you make any effort to obtain dismissals  
12 with prejudice on behalf of Saint Louis Park and the  
13 State of Minnesota?

14 A. Yes, I did.

15 Q. What efforts did you make?

16 A. I was in regular contact with counsel for the  
17 Pollution Control Agency in order to obtain the PCA's  
18 dismissal.

19 Q. What do you mean by "regular contact"?

20 MR. COYNE: Ed, what time frame are you  
21 now directing the witness to?

22 MR. SCHWARTZBAUER: The period of time  
23 leading up to June 15, 1973.

24 MR. COYNE: We would object to questions  
25 probing the content of conversations between counsel

1 for Saint Louis Park and counsel for the State during  
2 this period.

3 MR. POPHAM: I think your question now  
4 pending was to define a time of contact.

5 BY MR. SCHWARTZBAUER:

6 Q. Explain what he meant when he said "regular  
7 contact".

8 MR. POPHAM: I have no objection to that.

9 MR. SCHWARTZBAUER: Good.

10 A. By regular contact I would recall telephone  
11 calls once every two to three weeks and in the two  
12 months preceding the middle of June 1973.

13 Q. During those conversations did you bring the  
14 attorney for the State up to date on what was happening  
15 with respect to the sale?

16 MR. POPHAM: That would be objected to.

17 MR. COYNE: I join in the on objection.

18 BY MR. SCHWARTZBAUER:

19 Q. I am going to hand you a copy of Reilly Tar  
20 Exhibit 34. Can you tell us what that is?

21 A. Yes, it's a letter to me from Jack Van De  
22 North of the Minnesota Pollution Control Agency dated  
23 June 15, 1973.

24 MR. COYNE: We would object to the  
25 inclusion of this document among the Deposition

1 Exhibits and examination with regard to the content '69  
2 of the document.

3 MR. POPHAM: That's the position of the  
4 City also.

5 MR. SCHWARTZBAUER: If I ask him  
6 questions about it will you instruct him not to answer?

7 MR. POPHAM: If they are objectionable.

8 MR. SCHWARTZBAUER: I am just trying to  
9 find out if you think any question about this document  
10 would be objectionable.

11 MR. POPHAM: I preserved our objection  
12 to the document itself so I don't feel a need to go  
13 beyond that. I will look at your further questions  
14 simply as to whether they involve work product or  
15 privilege.

16 BY MR. SCHWARTZBAUER:

17 Q. The first sentence says, "I am writing this  
18 letter to confirm the status of the above-entitled  
19 matter concerning our meeting today." Did you have a  
20 meeting with Jack Van De North on June 15, 1973?

21 A. Either that day or the day before.

22 Q. Where was it?

23 A. It would have been at the offices of the  
24 Pollution Control Agency, the address reflected on this  
25 exhibit.

1 Q. Was there anybody else there besides Van De  
2 North?

3 A. Nobody directly involved in our meeting.

4 Q. How did you happen to go there?

5 A. I had called earlier that week and requested  
6 an appointment.

7 Q. What was the purpose for the meeting?

8 MR. POPHAM: That would be objected to.

9 BY MR. SCHWARTZBAUER:

10 Q. What was said?

11 MR. POPHAM: That would be objected to.

12 MR. COYNE: Join in the objection.

13 BY MR. SCHWARTZBAUER:

14 Q. By this time did the State of Minnesota have  
15 possession of the purchase agreement?

16 A. I don't recall whether they did or not.

17 Q. By this time did the Pollution Control Agency  
18 know that Saint Louis Park had taken over the  
19 responsibility for soil and water contamination?

20 MR. COYNE: Would you read back the  
21 question, please?

22 (Whereupon the requested portion of the  
23 record was read by the Court Reporter.)

24 THE WITNESS: I didn't hear the  
25 objection.

1 MR. SCHWARTZBAUER: He wanted the  
2 question read.

3 (Whereupon the requested portion of the  
4 record was read by the Court Reporter.)

5 MR. POPHAM: I will object to any  
6 response to the question that would call for either  
7 privileged or work product matter. I think this is a  
8 question, like the earlier question, if there is  
9 something from which you can answer the question that  
10 is not objectionable then you should answer it but you  
11 should not involve either of those items.

12 MR. COYNE: I would join in the  
13 objection and further object that there is no  
14 foundation for the question.

15 A. I would have to state for the record that any  
16 answer to that question would necessarily be predicated  
17 on work product and privileged communication.

18 BY MR. SCHWARTZBAUER:

19 Q. Had you told the Pollution Control Agency  
20 that Saint Louis Park had taken over responsibility for  
21 soil and water contamination?

22 MR. POPHAM: Objection.

23 MR. COYNE: Join in the objection.

24 BY MR. SCHWARTZBAUER:

25 Q. Looking at the third paragraph, Van De North

1 says to you: "To allow time for gathering further  
2 information and for submitting a proposal, the City of  
3 Saint Louis Park will attempt to delay the closing of  
4 its real estate transaction with Reilly until August 15,  
5 1973." Did the State ask you to delay the closing?

6 MR. POPHAM: Objection.

7 MR. COYNE: Join in the objection.

8 BY MR. SCHWARTZBAUER:

9 Q. What difference did it make to the State as  
10 to whether the chosing was delayed or not?

11 MR. POPHAM: Objection.

12 MR. COYNE: Join in the objection.

13 BY MR. SCHWARTZBAUER:

14 Q. Was there any suggestion on Van De North's  
15 part or your part that you meet with Reilly to discuss  
16 actions which were deemed necessary with respect to the  
17 site?

18 MR. POPHAM: Objection.

19 MR COYNE: Join in the objection.

20 BY MR. SCHWARTZBAUER:

21 Q. Among other things, the letter says in the  
22 second paragraph: "We will not be in a position to  
23 consider a dismissal of our complaint against Reilly  
24 until we have received and reviewed a proposal from the  
25 City of Saint Louis Park for eliminating potential

1 pollution hazards at the Republic Creosote site." Now,  
2 did Mr. Van De North say anything about a necessity to  
3 obtain a proposal from Reilly for eliminating pollution  
4 hazards?

5 MR. POPHAM: Objection.

6 MR. COYNE: Join in the objection.

7 BY MR. SCHWARTZBAUER:

8 Q. After talking to Mr. Van De North and getting  
9 this letter from him, did you talk to Tom Reiersgord  
10 about this?

11 A. No.

12 Q. Well, did you have conversations with him  
13 concerning the question whether the State would deliver  
14 its dismissal with prejudice as promised?

15 A. Yes, I did. I might add, to clarify the  
16 record, this letter was not received by me until the  
17 transaction would have been closed and concluded with  
18 Mr. Reiersgord.

19 Q. I see. Okay. But you apparently had had  
20 this conversation with Van De North, as you previously  
21 testified, correct?

22 A. Yes.

23 Q. Did you tell Tom Reiersgord about the  
24 conversation?

25 A. Yes.

1 Q. What did you tell him?

2 A. I told Mr. Reiersgord that the dismissal with  
3 prejudice on the part of the State would not be  
4 forthcoming at the time of closing due to the fact the  
5 staffs of the City and the State had some detail work  
6 to work out with respect to surface clean up.

7 Q. Did you also tell him, Rolfe, that there was  
8 a new lawyer on the case for the Pollution Control  
9 Agency?

10 A. I believe I did, yes.

11 Q. Did you tell him because there was a new  
12 lawyer on the case you were having problems getting the  
13 dismissal?

14 A. I don't recall, but it's possible I did.

15 Q. Did you tell him that the State of Minnesota  
16 had any problems in accepting Saint Louis Park as the  
17 party that would do the work rather than Reilly?

18 A. No, I don't believe I did.

19 Q. And indeed had the State of Minnesota  
20 expressed any objection to accepting Saint Louis Park  
21 as the one that would do the work rather than Reilly?

22 MR. POPHAM: I think that I am going to  
23 object to the form of the question to the State  
24 accepting the City as representing a legal conclusion.  
25 I think that the question of the witness should clarify



1 statements made between himself and Mr. Reiersgord as  
2 against going to conclusions. So I would object to the  
3 form of the question as propounded.

4 MR. COYNE: I would join in the  
5 objection.

6 BY MR. SCHWARTZBAUER:

7 Q. Well, would you agree with me, Rolfe, that  
8 you did not tell Tom Reiersgord that the State had any  
9 objection to the release of Reilly Tar as the person  
10 responsible for the clean up?

11 MR. POPHAM: Same objection.

12 MR. SCHWARTZBAUER: Let me take just  
13 about a five minute break.

14 (At this time a brief recess was taken.)

15 BY MR. SCHWARTZBAUER:

16 Q. Back on the record and back to this period  
17 June 15, 1973 when Mr. Van De North had this  
18 conversation with you and wrote this letter to you.  
19 Now, in the months leading up to that conversation and  
20 letter, Rolfe, had you told Tom Reiersgord that when  
21 the closing finally occurred as scheduled on June 15,  
22 that you expected that the State would issue and  
23 deliver a dismissal?

24 A. Yes, I had.

25 Q. And in fact in the various conversations that

1 you had with the State, as you mentioned earlier, had  
2 they indicated to you that they would do that?

3 MR. POPHAM: That would be objected to.

4 A. I had very few conversations with the State  
5 up to the week immediately preceding the closing.

6 Q. But in the months preceding 1973 you had  
7 several conversations with representatives the State,  
8 did you not?

9 A. Two -- three short perfunctory calls, nothing  
10 of substance, really.

11 Q. Who did you talk to?

12 A. I don't recall who I talked to for sure. I  
13 don't believe I talked to Mr. Van De North until  
14 immediately preceding the closing.

15 Q. Do you know whether it was Lindall or was it  
16 somebody else?

17 A. I am not sure. I think my calls were on the  
18 nature of inquiry trying to check the status and find  
19 out who was handling the file for the State.

20 Q. Do you remember that there was kind of a  
21 hiatus there between the time that Lindall left and  
22 somebody else took over?

23 A. I believe that's correct, yes.

24 (At this time RTC Deposition Exhibit

25 63 was marked for identification by the

1 Court Reporter.)

2 BY MR. SCHWARTZBAUER:

3 Q. I have handed the witness Reilly Tar Exhibit  
4 63. Can you tell us what that is?

5 A. Yes, it's a letter that I apparently wrote to  
6 Eldon Kaul on January 7, 1974.

7 Q. You said "apparently," but did you write it?

8 A. Yes, I did.

9 Q. That letter begins, "When I spoke with you on  
10 December 11, 1973." Had you spoken with him?

11 A. Yes, I had.

12 Q. Was that by telephone?

13 A. Yes, I believe it was.

14 Q. Who called who?

15 A. To the best of my recollection I called him.

16 Q. What was the situation that led up to the  
17 call?

18 A. I believe it was a routine followup call  
19 pertaining to the dismissal.

20 Q. You go on in your letter and say: "You  
21 indicated that you would send a stipulation within one  
22 week containing the terms by which the Pollution  
23 Control Agency would be willing to dismiss the above  
24 litigation." What were you referring to there when  
25 you used the word "stipulation"?

1 Louis Park had delivered a dismissal and Reilly had  
2 delivered a dismissal and the only party that had  
3 executed and delivered a written dismissal was the  
4 State of Minnesota, correct?

5 A. That is correct.

6 Q. Why was that a concern of the City of Saint  
7 Louis Park?

8 A. I believe because the City understood one was  
9 forthcoming and indicated one would be forthcoming in  
10 the initial purchase agreement.

11 Q. Now, this is January 7, 1974. At that  
12 particular time, Rolfe, were you still conducting a  
13 joint prosecution with the Pollution Control Agency or  
14 at that particular time was the City of Saint Louis  
15 Park adverse to the Pollution Control Agency?

16 MR. POPHAM: I think that calls for a  
17 legal conclusion. I will say that I think it is the  
18 position of the City, at that point in time the City  
19 having furnished a dismissal to Reilly, was no longer  
20 in a lawsuit with them. It is also our position that  
21 at that point in time we were not adverse to the City  
22 either.

23 MR. SCHWARTZBAUER: You mean to the  
24 Pollution Control Agency?

25 MR. POPHAM: I mean to the Pollution

1 Control Agency.

2 BY MR. SCHWARTZBAUER:

3 Q. Was it your understanding that as of January  
4 1974 the city and the Pollution Control Agency staff  
5 were negotiating the terms that would be contained in a  
6 proposed stipulation to be executed by Saint Louis Park  
7 and the Pollution Control Agency?

8 A. Yes, that was my understanding. They were  
9 very near concluding those negotiations.

10 Q. Was it also your understanding that Reilly  
11 Tar would not be a party to that stipulation?

12 A. Yes.

13 Q. This letter does not indicate that there are  
14 any copies sent to Mr. Reiersgord. Is it true that no  
15 copy was sent to him?

16 A. I am sure that would be the case because I  
17 always note cc when I send copies to anybody other than  
18 the addressee.

19 Q. Is it also true that you did not tell him  
20 about this conversation with Mr. Kaul or did not tell  
21 him about this letter?

22 A. I would think that would be true. I  
23 certainly do not recall telling him about the  
24 conversation or the letter.

25 Q. And that would apply to Peilly as well?

1 A. Yes.

2 (At this time RTC Deposition Exhibit  
3 64 was marked for identification by the  
4 Court Reporter.)

5 BY MR. SCHWARTZBAUER:

6 Q. The Reporter has just handed you Reilly Tar  
7 Exhibit 64. Can you identify that for us?

8 A. Yes, it's a letter dated January 14, 1974 to  
9 me from Eldon Kaul.

10 Q. And you did receive that letter about that  
11 time?

12 A. Yes, I did.

13 Q. Did you receive any further explanation from  
14 Mr. Kaul concerning the decision that he describes  
15 there with respect to the delay in sending the  
16 stipulation?

17 A. No, I did not.

18 (At this time RTC Deposition Exhibits 65  
19 and 66 were marked for identification by  
20 the Court Reporter.)

21 BY MR. SCHWARTZBAUER:

22 Q. I am handing you two exhibits at the same  
23 time, Rolfe, one is Reilly Exhibit 65 and the other is  
24 66. I want you to look at them together because they  
25 seem to relate to the same thing but for the record can

1 you identify them for us?

2 A. I haven't seen either one of these until  
3 today. Exhibit 65 appears to be a letter from the  
4 Minnesota Pollution Control Agency to Wayne Popham, of  
5 our office, of March 10, 1975 and the Exhibit 66  
6 appears to be a letter from me to Mr. Johannes of the  
7 Minnesota Pollution Control Agency.

8 Q. And did you in fact write that letter to Mr.  
9 Johannes?

10 A. It appears to be my signature. I don't  
11 recall having written it, but apparently I did because  
12 it is my signature on that copy.

13 Q. I take it you did not review this before  
14 coming here today to testify?

15 A. No, I didn't.

16 Q. Would you take some time now to read the  
17 exhibits and with respect to Exhibit 65, which is, as I  
18 said, a letter from Johannes addressed to Wayne Popham,  
19 March 10, 1975, and also has attached to it a document  
20 called, "Findings of Fact and Conclusions and  
21 Recommendations." Would you take such time as you want  
22 to to review that? My questions are going to relate to  
23 Pages 11, 12 and 13, specifically begining with  
24 Paragraph 3 on Page 11.

25 A. Okay. I have reviewed those items.

1           Q.    First of all, your letter, Exhibit 66, that  
2 contains some handwriting in the margin which I would  
3 guess is somebody at the State of Minnesota. Do you  
4 know whose handwriting that is?

5           A.    No, I do not.

6           Q.    The other document, the Findings of Fact,  
7 which is part of Exhibit 55, on Pages 11 and 12 also  
8 contain some marginal handwritten notes. Whose notes  
9 are those?

10          A.    I don't know.

11          Q.    Are they yours?

12          A.    No.

13          Q.    Paragraph 3, for example it says next to the  
14 margin -- pardon me, next to the paragraph it says "clarif  
15 That's not your your writing?

16          A.    No.

17          Q.    On the next page, will you look at Page 12?

18          A.    Uh-huh.

19          Q.    Down on the left-hand margin there is also  
20 some handwritten notations. Do you recognize that  
21 handwriting?

22          A.    No, I do not.

23          Q.    Would you know if it was Wayne Popham's  
24 handwriting?

25                   MR. POPHAM: I can say that it isn't.



1 THE WITNESS: I would know and I would  
2 agree with that, it is not.

3 Q. And you can't tell us whose it is?

4 A. No, I do not know.

5 Q. If you look at your letter of March 14 you  
6 can see that there appears a relationship between your  
7 letter and the handwriting on the findings?

8 A. Uh-huh.

9 Q. Because on Page 2 of your letter you discuss  
10 certain objections that you have to Recommendations 3  
11 and 4?

12 A. Uh-huh.

13 Q. For example, under Item Number 4 on the  
14 second page of your letter you say, "Recommendation 40  
15 Page 12 is totally unacceptable in that the items  
16 contained in that paragraph are the subject of  
17 continuing work between the City, the Health Department  
18 and the Pollution Control Agency. None of these items  
19 was a part of the hearing on which the findings are  
20 based." Then if we go to Page 12 of the findings we  
21 see the handwritten notes "All right. Covered, 3 and 4  
22 commitment. Outside of hearing area. Not item of  
23 hearing." There seems to be a similarity between  
24 those handwritten comments and what you say here in  
25 your letter. Can you enlighten us at all based on that

1 observation as to who made the notations?

2 A. I think it was probably with the City of  
3 Saint Louis Park who made those notations.

4 Q. Was anybody in the Popham Haik law office  
5 working with you on this particular assignment?

6 A. I simply don't recall if they were or not.  
7 have no recollection.

8 Q. I take it since the original letter of March  
9 10 was addressed to Wayne Popham that he was at least  
10 one of the lawyers and perhaps the principle lawyer  
11 that was handling the NPDES permit proceedings, is that  
12 true?

13 A. I honestly don't know who was primarily  
14 responsible for that task from our office.

15 Q. Well, I would like to ask you if you would  
16 make inquiries and find out whose handwritten notes  
17 those are so that we can know whose deposition to  
18 schedule. Would you do that?

19 A. Okay. I will do that.

20 MR. POPHAM: Counsel, is this a copy  
21 that was produced by the City?

22 MR. SCHWARTZBAUER: I think so but I  
23 can't be certain. I don't remember all of the systems  
24 that were used for numbering documents but I think  
25 that's produced by the City. I see that the letter

1 from Johannes is actually signed and therefore it  
2 appeared to me that it was an original but I am not  
3 sure of that.

4 MR. POPHAM: If Mr. Worden is right that  
5 someone at the City did it we will try to identify  
6 whose handwriting it is and advise you.

7 MR. SCHWARTZBAUER: Does any counsel  
8 that's here know who produced this copy of Exhibit 65?

9 MR. SHAKMAN: I would concur with your  
10 view that since the number has eight digits, and I  
11 believe ours had seven that that's likely not the  
12 State.

13 MR. SCHWARTZBAUER: Look at the "received"  
14 stamp on it, Steve. Part of it is blotted out but do  
15 you recognize that at all, somebody's office?

16 MR. POPHAM: That's what I am looking at  
17 and I am wondering what the term office would be. Do  
18 you know anything about that Rolfe

19 THE WITNESS: Although the letter was  
20 addressed to you I believe it was addressed to the  
21 Saint Louis Park City Hall and I believe this is the  
22 received stamp that the City uses when it gets mailed  
23 in.

24 MR. POPHAM: It may have been the City  
25 manager's office.

1 BY MR. SCHWARTZBAUER:

2 Q. There is also a notation up at the top in  
3 handwriting it says, "Popham's being sent today 2-12-75."

4 I don't know whose handwriting that is, do you, Rolfe?

5 A. No, I don't.

6 MR. SCHWARTZBAUER: Does anybody else  
7 here know whose handwriting that is?

8 MR. POPHAM: I don't. But I am sure  
9 someone at City Hall where this was mailed made a copy  
10 for me and sent it to our office.

11 MR. SCHWARTZBAUER: Okay. For the  
12 present then we will just let it go at that.

13 (At this time RTC Deposition Exhibit  
14 67 was marked for identification by the  
15 Court Reporter.).

16 BY MR. SCHWARTZBAUER:

17 Q. I am going to hand you Exhibit 67, Rolfe.  
18 Can you tell us what that one is?

19 A. It appears to be a memo to our legal file  
20 from me because it's in that style.

21 Q. Is that what it is?

22 A. Yes, that's what it is.

23 Q. This was a memo that you dictated to your  
24 file concerning the findings that were received along  
25 with Mr. Johannes' letter of March 10 that we just

1 looked at?

2 A. Yes.

3 MR. POPHAM: I am reviewing this  
4 document, counsel, to see if I see anything in it that  
5 appears to be either privileged or work product as  
6 contrasted with what the witness has testified to.  
7 There doesn't seem to be anything in my opinion that is  
8 subject to objection.

9 MR. SCHWARTZBAUER: Okay.

10 BY MR. SCHWARTZBAUER:

11 Q. I think I heard you say earlier in the  
12 deposition, Rolfe, that you were not involved in the  
13 NPDES hearings, but now we are looking at a couple of  
14 documents that indicate that you were to some extent.  
15 I don't mean to mix you up or contradict you except  
16 that I want to get at the facts. Does this help  
17 refresh your recollection and were you involved to some  
18 extent?

19 A. My recollection stands on my previous  
20 testimony that I was not involved in the NPDES hearings,  
21 I don't believe I was. I would assume that the memo  
22 and correspondence of March 14, 1975 were the result of  
23 a specific work assignment to me to sit down with the  
24 engineer and respond to the findings, but I did get  
25 involved responding to the findings although I have no

1 recollection of being involved in any hearings.

2 Q. Did you do anything else in connection with  
3 the NPDES permit, either with respect to the hearings  
4 or with respect to the application or with respect to  
5 bringing them all to a conclusion or in any other way?

6 A. I don't recall having done so.

7 (At this time RTC Deposition Exhibit  
8 68 was marked for identification by the  
9 Court Reporter.)

10 BY MR. SCHWARTZBAUER:

11 Q. I have just handed the witness Reilly Tar  
12 Exhibit 68, which appears to be a copy of the minutes  
13 of the Pollution Control Agency meeting of March 18 and  
14 19, 1975, which was produced by the State of Minnesota.  
15 Would you skip to Page 14?

16 A. Okay.

17 Q. The subject there, as you will see, is  
18 consideration of the Hearing Officer's Findings of Fact  
19 concerning this Saint Louis Park application. The  
20 second paragraph says, "Mr. Rolfe Worden, an attorney  
21 representing the City of Saint Louis Park, addressed  
22 the Agency and informed them of the proposed permit."  
23 Do you recall being there and doing that?

24 A. I don't recall at this point in time. But  
25 apparently I was, as is indicated by the minutes.

1 Q. The minutes indicate that you stated that you  
2 were in agreement with the proposed permit and I am  
3 just wondering, as I sit here, considering the fact  
4 that you had written a letter dated March 14 indicating  
5 certain objections that you did have to the proposed  
6 findings whether or not you indeed said that?

7 A. I assume that I would have been accurately  
8 quoted in the minutes and my recollection, although  
9 somewhat vague at this point in time, would be that in  
10 response to my letter the intervening time between the  
11 date of the letter and the date of the meeting that  
12 whatever problems and objections there were were  
13 apparently resolved.

14 Q. Are you sure of that or are you just  
15 surmising that?

16 A. I am surmising that because there was, with  
17 respect to the technical matters of pollution control  
18 and testing and various environmental matters, there  
19 was staff to staff contact almost on a continuing basis  
20 and I would get the conclusions of those contacts as  
21 opposed to being involved in them on a regular basis.

22 Q. Well, which members of the Saint Louis Park  
23 staff were working on this subject?

24 A. I believe at this point in time Dave Rudberg,  
25 who was the then director of public works, was

1 principally responsible for this, and if I see him then  
2 also had an outside consultant by the name of Wayne  
3 Long that was working with Mr. Pullberg.

4 Q. Anybody else on the City staff that you can  
5 think of?

6 A. Possibly I would have talked to Chris  
7 Churches but I think at this point in time it was in  
8 the bailiwick of the industrial and engineering people.

9 Q. And did you get with to discuss those  
10 findings?

11 A. I believe I met with Wayne Long and probably,  
12 although I can't say for certain, probably with Dave  
13 Pullberg.

14 Q. I haven't seen any version of the findings of  
15 fact that were changed between March 10 and the date of  
16 this hearing that fit with the findings in accordance  
17 with your suggestion. I would like to know if there  
18 that existed and that I haven't seen it but I haven't  
19 been able to find any so I told him to ask you and  
20 Mr. Popper if there were any modifications to the  
21 findings that were made between those dates whether you  
22 would produce them for us?

23 MR. POPPER: Yes will.

24 MR. SCHWARTZBAUM: Yes.

25 BY MR. SCHWARTZBAUM:



1 Q. Going on in the minutes. Now, as said going  
2 in time, I take it you accept the fact that you were  
3 there, Folie?

4 A. Yes, but I would have to study whether the  
5 scope of the meeting coincided with the scope of the  
6 findings or I simply don't recall the scope of the  
7 permit or to the extent it encompassed everything in  
8 the findings, or whether we were dealing with a very  
9 small aspect of the findings which would have been  
10 acceptable to the City.

11 Q. Incidentally the document we are looking at  
12 says Ralph Norden rather than Rolfe Norden?

13 A. That is a very common error in spelling of  
14 name.

15 Q. It's probable they were referring to you, is  
16 it?

17 A. Probable, yes.

18 Q. Did you have a chance to read the rest of  
19 Page 14?

20 A. Not thoroughly.

21 Q. Why don't you read it through thoroughly and  
22 see if it refreshes your recollection at all and see if  
23 you can tell us whether you were there for sure and see  
24 if you can recall the discussions attributed to Wilke,  
25 Rubberg, Mortner and Johannes?

1           A.    I don't specifically recall their comments,  
2 although I do recall that the engineering people on  
3 behalf of the city did not have calling lines I did at  
4 this meeting.

5                       MR. TOPP: It's my opinion in thinking  
6 about this that I must have been in trial or something  
7 that week because I have no memory of this either and I  
8 cannot recall the date, the time, the morning or  
9 evening, and I am guessing that I must have been in  
10 still in this week probably because I recall that  
11 I don't know why I should have been involved.

12                    THE WITNESS: That could be my  
13 recollection consistent with the way we were handling  
14 City of Saint Louis Park matters in our office at this  
15 point in time. Wayne had, as I know now, have overall  
16 responsibility but should report any errors that needed  
17 immediate attention, so this is possible that if Wayne  
18 would be unavailable then I would pick up on it.

19 BY MR. SCHWARTZBAUER:

20           2.    You will notice at the bottom of the page,  
21 that is Page 14, there is a resolution that was adopted  
22 by the Pollution Control Agency Board which is placed  
23 there. If I were to ask you any questions about the  
24 discussion leading up to that resolution would you be  
25 able to remember them and tell us about them?

1           A.     I am afraid I would have no recollection at  
2 all.

3           Q.     Then I won't waste our time on that. But  
4 getting back to Exhibit 65, which are the proposed  
5 Findings of Fact, do you still have that in front of  
6 you?

7           A.     No.

8           Q.     Let me hand it to you. Is it a fact that  
9 neither your office nor the City of Saint Louis Park  
10 ever objected to Finding 1, Finding Number 1?

11          A.     I really have no recollection one way or  
12 another on that.

13          Q.     You did not, did you?

14          A.     I don't recall having objected to Finding  
15 Number 1.

16          Q.     Let me ask you some general questions. I  
17 asked you earlier about negotiations with the City of  
18 Saint Louis Park, pardon me, negotiations with Reilly  
19 concerning the sale of the property. Can you remember  
20 any meetings or communications with Reilly that I  
21 haven't asked you about. By Reilly I mean any  
22 representatives of Reilly including Tom Reiersgord.

23          A.     Not really. I don't recall having dealt with  
24 anybody representing Reilly other than Mr. Reiersgord.

25          Q.     Have you told us about all of your meetings

1 and discussions with him?

2 A. Not in detail, in a general fashion.

3 Q. Tell us about any other meetings that you had  
4 with him. Tell us when they occurred and what was said?

5 A. I think most of the intense activity or  
6 meetings with Mr. Reiersgord occurred that week, or the  
7 week of June 15, and a couple days after that leading  
8 up to the closing of the transaction. Probably the  
9 most extensive meeting prior to the closing was, you  
10 know, dealing with some rather routine real estate  
11 mechanics. As I recall, the property although large in  
12 area, a significant portion of the property was platted  
13 into lots and blocks and every single lot was a  
14 different taxing parcel and so we had to spend a fair  
15 amount of time going through the numbers on the taxes  
16 and assessments and I don't recall the details, but  
17 figuring out what the appropriate prorata was to a lot  
18 by lot basis and what was a routine real estate matter  
19 was somewhat complicated by the significant number of  
20 lots involved. I know we talked about that. We talked  
21 about the mechanics of the closing that went over the  
22 numbers, you know, reviewed the documents.

23 Q. Well, this conversation with Jack Van De  
24 North and the letter from him that indicated that the  
25 State was not ready to deliver it's written dismissal

1 with prejudice, did you discuss that with Tom  
2 Reiersgord?

3 A. Yes, I did.

4 Q. And did you discuss with him the entering  
5 into of a Hold Harmless Agreement?

6 A. Yes, I did.

7 Q. Are you familiar with the Hold Harmless  
8 Agreement?

9 A. Yes, I am.

10 Q. What part did you play in preparing it?

11 A. As I recall, we talked about it generally and  
12 I think the actual document was prepared by our office.

13 Q. When you say your office, do you mean by you  
14 or by somebody else?

15 A. I believe by me. I think essentially, you  
16 know, Tom's position was that since we could not at  
17 that point in time deliver the Pollution Control Agency  
18 dismissal, as a trade off for that his client would  
19 require the Hold Harmless Agreement.

20 Q. Did you discuss that with representatives of  
21 the City of Saint Louis Park?

22 A. Yes, I did.

23 Q. And after you discussed it with them was the  
24 decision made that the City of Saint Louis Park would  
25 enter into such an agreement?

1 A. Yes, it was.

2 Q. And was such an agreement signed?

3 A. Yes, it was.

4 Q. Was there more than one draft of that  
5 agreement?

6 A. I don't recall. I don't believe it's  
7 something that either Tom or I spent a lot of time on.  
8 I think we both handled it in a rather perfunctory  
9 fashion.

10 Q. You told us earlier that you drafted it. Can  
11 you remember whether he made any alterations at all in  
12 it?

13 A. I don't recall what he did. We had talked  
14 about that agreement very briefly before it was drafted.  
15 I don't recall whether he made any alterations or not  
16 in it.

17 MR. SCHWARTZBAUER: Off the record.

18 (At this time a discussion was held off the  
19 record.)

20 BY MR. SCHWARTZBAUER:

21 Q. I am going to ask a couple of leading  
22 questions because so many years have passed. I have  
23 reviewed various files and records relating to the  
24 negotiation of the purchase and sale and I find in  
25 there several different drafts of the purchase

1 agreement. It's not always clear who tendered them to  
2 who. Tom Reiersgord's recollection is that he did meet  
3 with you to consider various different versions of the  
4 purchase agreement having different price tags in them  
5 and other terms that were different. For example,  
6 prior to the time that the \$1,900,000 purchase price  
7 was agreed on there were several proposals made by the  
8 City to buy it at lower prices. Can you remember being  
9 involved in any meetings with him concerning those  
10 other proposals?

11 A. Although it's possible, I really can't recall  
12 it. I do recall the fact that the City did a lot of  
13 its own negotiating in this matter, some directly with  
14 Tom and some directly with the principals of Reilly and  
15 I would be informed rather than being a part of those  
16 discussions.

17 Q. Well, I haven't seen your name on anything  
18 except that 1971 item that I showed you earlier that was  
19 marked as Exhibit 61, I think it was, but let me just  
20 take a minute here to find some others that could be  
21 helpful.

22 There is an offer to purchase in which the  
23 Saint Louis Park Housing and Development Authority  
24 offers to purchase the property at \$1,700,000, which  
25 has no date on it, but which was amongst the documents

1 that the City of Saint Louis Park produced. Can you  
2 remember being involved in the submission of that offer?

3 A. No, I can't.

4 Q. There is a draft purchase agreement, which  
5 was never signed, that is on the Miller Davis form,  
6 Purchase Agreement, dated just January 1972, which  
7 proposes that the City buy the land for a total  
8 purchase price of \$2,000,000. Although I don't see any  
9 indication as to whose proposal that was, that must  
10 have been Feilly's proposal. Can you remember being  
11 involved in either the receipt of or any discussions  
12 with respect to that version of the proposal?

13 A. To the best of my recollection, that version  
14 of the proposal was prepared by Mr. Reiersgord and the  
15 receipt of that proposed agreement coincided with the  
16 commencement of my involvement in this.

17 MR. COYNE: Ed, what number stamps are  
18 on that document of January 1972?

19 (At this time a discussion was held off  
20 the record.)

21 BY MR. SCHWARTZBAUER:

22 Q. Okay. Go back to what you just said. You  
23 said to the best of your recollection that's when your  
24 involvement began, right?

25 A. Yes.



1 Q. Tell us whatever you can remember about the  
2 receipt of that proposal.

3 A. Well, I recall, you know, making some  
4 cosmetic changes as to tax allocations and the change  
5 in style in that my draft in response to that draft,  
6 and all subsequent drafts, were not on the Miller Davis  
7 form but rather on a form substantially similar to the  
8 purchase agreement that was finally executed in April  
9 of 1972.

10 Q. Can you remember whether you received along  
11 with that Miller Davis form of purchase agreement, a  
12 document like Exhibit 61?

13 A. No, I don't recall whether I received 61 or  
14 anything like that at that point in time.

15 (At this time RTC Deposition Exhibit  
16 69 was marked for identification by the  
17 Court Reporter.)

18 BY MR. SCHWARTZBAUER:

19 Q. The Reporter is handing you a document marked  
20 what?

21 A. Deposition Exhibit 69.

22 Q. I am sorry, I don't have the usual five  
23 copies of that but I had no idea whether this would  
24 relate to Mr. Worden's testimony or somebody else's.  
25 That appears to be an offer to purchase, is that

1 correct?

2 A. That is correct.

3 Q. That one appears to be typewritten rather on  
4 a Miller Davis form?

5 A. Yes.

6 Q. Did you prepare that?

7 A. I would think I did because the initial pages  
8 are my style of preparing documentation and it would  
9 appear that someone at the City had input on that as  
10 well because I see a part of the document is not in our  
11 typewriting but rather deals in detail with removal of  
12 buildings and equipment, which was something that the  
13 City had worked on directly with Reilly, amalgamation  
14 of the city's work product and ours, I believe.

15 MR COYNE: What is the number on that  
16 document?

17 THE WITNESS: 40000106.

18 MR. COYNE: What is the date of the  
19 document?

20 MR. SCHWARTZBAUER: It has a handwritten  
21 date 2-23-72.

22 MR COYNE: Whose handwritten note is  
23 that.

24 MR. SCHWARTZBAUER: That's a Dorsey  
25 internal handwritten note on it.

1 BY MR. SCHWARTZBAUER:

2 Q. Does it have any other date on it that you  
3 can see?

4 A. Its apparently an incomplete draft in that it  
5 does not have a signature block on it.

6 Q. Can you remember any of the circumstances  
7 concerning the presentation of that proposal to Reilly?

8 A. No, I cannot.

9 Q. If I ask you questions about the difference  
10 between that document and any earlier documents would  
11 you be able to answer them?

12 A. I would have to have to have the earlier  
13 documents in front of me to do so.

14 (At this time RTC Deposition Exhibit  
15 70 was marked for identification by the  
16 Court Reporter.)

17 BY MR. SCHWARTZBAUER:

18 Q. I am going to hand you Reilly Tar Exhibit 70,  
19 which appears on its phase to be a letter from Chris  
20 Cherches to Herb Finch dated July 30, 1971 with an  
21 attachment that consists of three pages. Again, I  
22 don't have the extra copies for all the people around  
23 the table for the same reason, but do you recognize  
24 that? Have you seen it before?

25 A. It's possible. I don't believe I have seen

1 this letter or the attachment previously.

2 Q. Can you tell by looking at the attachment  
3 whether you prepared that or somebody else prepared it?

4 A. I believe somebody else would have prepared  
5 this.

6 Q. What is the number on that, Rolfe, stamp  
7 number on the bottom?

8 A. The stamp number is a little vague. I think  
9 it's 301482.

10 Q. Now, may I see it for just a minute? Maybe  
11 we can try to look at it together. There are some  
12 differences between this offer and Exhibit 69?

13 A. Yes.

14 Q. As a matter of fact, several differences, one  
15 of which is that this offer is \$700,000 and the other  
16 is \$1,700,000. There are undoubtedly other differences,  
17 but I want you to focus on the fact that this agreement,  
18 Exhibit 70, contains Paragraph 10 in which it was  
19 proposed that the company would hold the City harmless  
20 from any and all claims which might arise now or in the  
21 future relative to soil or water impurities and Exhibit  
22 69 does not have that paragraph. Now, can you  
23 enlighten us as to how that paragraph came to be  
24 eliminated?

25 A. I am afraid I really can't. I don't know.

1 (At this time RTC Deposition Exhibit  
2 71 was marked for identification by the  
3 Court Reporter.)

4 BY MR. SCHWARTZBAUER:

5 Q. Take a minute just to read that through and  
6 then identify it for us, please. I am speaking about  
7 Reilly Tar Exhibit 71.

8 A. Yes. Exhibit 71 is a Hold Harmless Agreement  
9 dated June 19, 1973 between the City of Saint Louis  
10 Park and Reilly Tar & Chemical Corporation.

11 Q. Is that what it is?

12 A. Yes, it is.

13 Q. In Paragraph 3 on the second page the  
14 agreement provides that, "The City hereby agrees to  
15 hold Reilly harmless from any and all claims which may  
16 be asserted against it by the State of Minnesota acting  
17 by and through the Minnesota Pollution Control Agency  
18 and will be fully responsible for restoring the  
19 property at its expense to any condition that may be  
20 required by the Minnesota Pollution Control Agency."  
21 Now, were there any conversations that you are aware of  
22 at the time that this document was entered into that  
23 would shed any light upon whether Reilly Tar was  
24 expecting to be held harmless for anything less than  
25 any and all claims?

1           A.    I think, as I mentioned previously, we didn't  
2 have a lot of discussion on that. I believe in talking  
3 with Tom he expressed the thought that it was Reilly's  
4 intention to in effect substitute the City of Saint  
5 Louis Park for Reilly in the pending litigation.

6           Q.    What did you say in response to that, if  
7 anything?

8           A.    I don't recall whether I responded to it or  
9 how I would respond to it, Ed.

10          Q.    Was it prior to that time that the language  
11 was drafted?

12          A.    I don't recall. It would have been very  
13 close to it since this all came up in a very compressed  
14 time period.

15          Q.    Can you remember anything else that was said  
16 on that subject?

17          A.    You are speaking with respect to  
18 conversations with Mr. Reiersgord?

19          Q.    Yes, and I am here now intending to ask you  
20 about things that the Reilly people said or that Saint  
21 Louis Park people said including yourself.

22          A.    I had probably more discussions with  
23 representatives of the City of Saint Louis Park on this  
24 document than I did with Tom.

25          Q.    What was said?

1 MR. POPHAM: That would be objected to.  
2 BY MR. SCHWARTZBAUER:

3 Q. Are you aware of any other discussions  
4 between Saint Louis Park representatives and Reilly  
5 representatives with respect to that clause?

6 A. No, I am not.

7 Q. Looking then at Paragraph Number 4, which  
8 reads, "The Hold Harmless Agreement in Number 3 hereof  
9 is intended to be supplementary to the Agreement  
10 between the City and Reilly relative to Carl Bohlander  
11 and Sons and to Paragraph 4 of the agreement of April  
12 14, 1972 between the City and Reilly for the purchase  
13 of real estate." Why was that included?

14 A. Well, I think the part about Bohlander & Sons  
15 was included at the request of Reilly because they  
16 apparently had a separate agreement with Bohlander and  
17 I think the thought was that this agreement was not  
18 intended to change that agreement and the same held  
19 true with respect to the original purchase agreement.  
20 This agreement was not to be in lieu of or a  
21 modification of the purchase agreement of April 14 but  
22 rather essentially a separate document. It was a trade  
23 off for the lack of the dismissal at that point in time.

24 Q. So it was your understanding then, I take  
25 take it, that the agreements contained in the April 14

1 document still survived?

2 A. Yes.

3 MR. SCHWARTZBAUER: That's all I have.

4 MR. COYNE: Ed, we would like to have a  
5 moment to review Deposition Exhibit 69 and 70.

6 MR. POPHAM: The witness will read and  
7 sign.

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1 STATE OF MINNESOTA )  
2 ) ss.  
3 COUNTY OF HENNEPIN)

4 Be it known that I took the deposition of ROLFE A.  
5 WORDEN, on the 21st day of April 1983 at Minneaolis,  
6 Minnesota;

7 That I was then and there a Notary Public in and  
8 for the County of Hennepin State of Minnesota, and that  
9 by virtue thereby I was duly authorized to administer  
10 an oath;

11 That the witness before testifying was by me first  
12 duly sworn to testify the whole truth and nothing but  
13 the truth relative to said cause;

14 That the testimony of said witness was recorded in  
15 Stenotype by myself and transcribed into typewriting  
16 under my direction; and that the deposition is a true  
17 record of the testimony given by the witness to the  
18 best of my ability;

19 That I am interested in the outcome of the action;

20 That the reading and signing of the deposition by  
21 the witness was executed as evidenced by the preceding  
22 page;

23 That Notice of Filing was waived.

24 WITNESS MY HAND AND SEAL this 21st day of April  
25 1983.

-----  
Kirby A. Kennedy

Court Reporter